

OCT 28 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KEEGAN C. VAN TUYL,

Defendant - Appellant.

No. 10-30020

D.C. No. 2:05-cr-00133-LRS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Lonny R. Suko, Chief Judge, Presiding

Submitted October 19, 2010**

Before: O'SCANNLAIN, TALLMAN, and BEA, Circuit Judges.

Keegan C. Van Tuyl appeals from the sentence imposed upon revocation of supervised release. We have jurisdiction under 28 U.S.C. § 1291. We affirm in part, vacate in part, and remand.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Van Tuyl's sole contention is that the supervised release condition prohibiting association with Neo-Nazi/white supremacist affiliates is unconstitutionally overbroad. The government agrees that the judgment should be changed to explicitly reflect that the condition prohibits association with *known* neo-Nazi/white supremacist affiliates. Under these circumstances, we vacate the challenged condition and remand for the district court to re-sentence in a manner consistent with this opinion. *See, e.g., United States v. Ross*, 476 F.3d 719 (9th Cir. 2007). The sentence is affirmed in all other respects.

VACATED in part; AFFIRMED in part; and REMANDED.